HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. M/S No 471/2006

Kuldeep Kaur

& others

Vs.

The Civil Judge

Division Khatima & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 6-5-2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 471 (MS) OF 2006

Kuldeep Kaur,
W/o late Shri Man Singh Dutta,
R/o Khatima,
District-Udham Singh Nagar.
.....Petitioner.

Versus

1. The Civil Judge, Junior Division, Khatima,
   District U.S. Nagar.
2. Dinesh Gupta, S/o Balwant Singh Gupta,
   R/o Uttaranchal Agency Khatima,
   District – U.S. Nagar. .....Respondents.

Mr. S.C. Bhatt, Advocate for the petitioner.
Learned Standing Counsel for the respondent no.1.

Dated: 06.05.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 07.04.2006 (Annexure No. 4 to the writ petition) passed by the respondent no. 1. Further prayer has been made for a writ of mandamus staying the operation of the impugned order dated 07.04.2006.

2. Briefly stated, according to the petitioner, he is the landlord and the respondent no. 2 is the tenant and he has filed an application under Section 27(1) of U.P. Act No. 13 of 1972. The respondent no. 1 passed an order directing that the petitioner will supply water and electricity within 5 days.

3. The grievance of the petitioner is that the said order was passed without hearing the petitioner. The other grievance of the petitioner is that the respondent no. 2 has already taken the electricity and water connection and as such the order passed by the court below to the effect that the petitioner may be provided amenities under Section 27 of the Act within five days cannot be allowed to stand.

4. A perusal of Section 27 of U.P. Act No. 13 of 1972 provides the enforcement of landlord's obligation regarding amenities. The same is quoted below:-

"27. Enforcement of landlord's obligation regarding amenities.- *(1) The prescribed authority may, on an application of the tenant, serve upon the landlord a notice requiring him, within such period, not exceeding one week, as may be specified in the notice, to restore any amenity alleged to have been cut off, withheld or reduced in contravention of sub-section (1) of Section 26 or to who cause why an order under this section be not passed against him.*

(2) If the landlord fails to restore the amenity within the said period, or to show sufficient cause, the prescribed authority may by order permit the tenant to have the amenity restored at his cost, and thereupon the tenant shall be entitled to recover such cost as may be incurred by him in pursuance of the order, by deduction from the rent payable to the landlord, after furnishing to him the account of the expenditure, and nothing in Section 6 shall be deemed to apply to such cost:

5. As will appear from the aforesaid reference has been made to the amenities, which has illegally been cut. The statement of the petitioner is that since the respondents have already taken both the connections, therefore, the petitioner is

not liable to get the obligation enforced so far as electricity and water connection is concerned.

6. Notice has been sent to the respondents no.1, but none has turned up. The petitioner has submitted that in view of the subsequent events, the matter requires reconsideration of the order dated 05.09.2005 passed by the Prescribed Authority.

7. In view of the aforesaid averments made, the matter is sent bank to the Prescribed Authority, who shall decide the the same in accordance with law within a period of three months from the date of production of the certified copy of the order in accordance with law.

8. Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

06.05.2006
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